REMARKS

Claims 1-7, 10, 14, 16, 17, 22, and 24 are amended, claims 15, 18-21 and 23 are canceled, and claims 27-28 are added. Claims 1-14, 16, 17, 22, and 24-28 are now pending in this application.

The amendments to claims 1-7, 14, and 17 deleting the term "supplement" and inserting the term "composition" are supported by the specification as filed, for example at page 3, lines 11-16.

Claim 1 has been amended to contain the elements of originally-filed claim 16.

Claim 22 has been amended to contain the elements of originally-filed claim 23. The amendments to claim 22 and to claim 24 are also supported at page 8, lines 20-26 of the specification.

Claims 2-4 and 22 have been amended to refer to the "poultry" in the base independent claim rather than the "animal".

The amendment to claim 16 is supported by the specification as filed, for example at page 3, lines 14-16.

New claims 27 and 28 are supported by the specification as filed, for example at page 6, lines 28-34.

The amendments to the claims are supported by the application as filed, and no new matter has been added.

I. Claim Objections

The Examiner objected to claim 15 because of a typographical error. Claim 15 has been cancelled, thereby rendering this objection moot.

II. The Double Patenting Rejection

The Examiner rejected claims 1-4, 7-9 and 11-15 under the judicially created doctrine of obviousness-type double patenting, alleging that those claims are unpatentable over claims 1-4 and 6-8 of U.S. Patent No. 6,004,576. Claim 15 has been cancelled. As this rejection may be applied to the pending claims, it is respectfully traversed.

As amended, claim 1 of the present application recites a method of increasing the live weight of poultry comprising: administering to poultry a composition comprising animal plasma, wherein

the administration of the composition to the poultry preferentially increases the yield of white meat from the poultry. Claims 2-4, 7-9, and 11-14 depend either directly or indirectly from claim 1.

In contrast, claim 1 of the '576 patent recites a method of increasing weight gain and improving feed efficiency of animals in the first stages of life comprising: administering said animals a supplement consisting essentially of granulated animal plasma made by the process of: drying said animal plasma; compressing said dried animal plasma at about 1200-1400 psi; and screening said compressed dried animal plasma to form granulated particles; wherein each of the resulting granulated particles has a size greater than about 100 microns but less than about 2000 microns; and further providing that the bulk density of the granulated particles is about 50 pounds per cubic foot. Claims 2-4 and 6-8 of the '576 patent depend either directly or indirectly from claim 1.

The claims of the '576 patent do not teach or suggest a method of increasing the live weight of poultry and preferentially increasing the yield of white meat from the poultry comprising administering to poultry a composition comprising animal plasma. Furthermore, Applicants respectfully note that the Examiner did not reject claim 16 under the judicially created doctrine of obviousness-type double patenting. Claim 1 has been amended to include the elements of claim 16. Accordingly, the Examiner is respectfully requested to withdraw the obviousness-type double patenting rejection of the claims.

III. The 35 U.S.C. § 112 Second Paragraph Rejections

The Examiner rejected claims 1-21 under 35 USC § 112, second paragraph, alleging that those claims are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 1

The Examiner alleged that the term "supplement" in claim 1 is unclear. Applicants respectfully disagree. However, to facilitate prosecution, the term "supplement" has been replaced throughout the claims with the term "composition", thereby rendering this objection moot.

Claim 2

The Examiner noted that the term "the animals' feed" in claim 2 lacks antecedent basis. Claim 2 has been amended to recite "the poultry's feed", thereby rendering this objection moot.

Claim 15

The Examiner alleged that the term "production cycle" in claim 15 is unclear. Applicants respectfully disagree. However, for reasons unrelated to this rejection, claim 15 has been cancelled.

Claim 16

The Examiner alleged that the term "preferentially" renders claim 16 unclear. Specifically, the Examiner alleged that it is not clear what the term "preferentially" is relative to. Claim 1 has been amended to include the elements of claim 16, and as this rejection may be applied to the pending claims, it is respectfully traversed. As amended, claim 1 includes the phrase "the administration of the composition to the poultry preferentially increases the yield of white meat from the poultry". The specification at page 9, lines 1-5, discloses that "[w]hen fed to poultry, it has been surprisingly found that in addition to increasing the overall weight of the poultry, the plasma protein composition of this invention preferentially increases the average yield of breast meat at the expense of leg and thigh meat yield." Applicants submit that the art worker, in possession of Applicants' specification, would readily understand the metes and bounds of the term "preferentially" to be clear.

Claims 18 and 19

The Examiner alleged that the term "poultry feed" in claim 18 and the term "up to 100%" in claim 19 are unclear. Applicants respectfully disagree. However, Applicants have cancelled these claims, thereby rendering these rejections moot.

Conclusion

Thus, it is submitted that the pending claims are in conformance with the requirements of 35 U.S.C. § 112, second paragraph. Therefore, withdrawal of the rejections of the claims under 35 U.S.C. § 112, second paragraph, is appropriate and respectfully requested.

IV. The 35 U.S.C. § 112 First Paragraph Rejection

The Examiner rejected claim 10 under 35 U.S.C. § 112, first paragraph, alleging that claim 10 contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As this rejection may be applied to the pending claims, it is respectfully traversed.

Claim 10 depends from independent claim 1, and claim 1 recites a method of increasing the live weight of poultry comprising: administering to poultry a composition comprising animal

plasma, wherein the administration of the composition to the poultry preferentially increases the yield of white meat from the poultry. As amended, claim 10 recites that "the source of the animal plasma is a transgenic animal".

To be enabling, the specification must teach those skilled in the art how to make and use the full scope of the claimed invention without undue experimentation. *Genentech Inc. v. Novo Nordisk A/S*, 108 F.3d 1361, 42 U.S.P.Q.2d (BNA) 1001, 1004 (Fed. Cir. 1997). The scope of the claims must bear a reasonable correlation to the scope of enablement provided by the specification to persons of ordinary skill in the art. *Id.* Whether making or using the invention would have required undue experimentation, and thus whether the disclosure is enabling, is a matter of degree. *PPG Industries Inc. v. Guardian Industries Corp.*, 156 F.3d 1351, 37 U.S.P.Q.2d (BNA) 1618, 1623 (Fed. Cir. 1996). The fact that some experimentation is necessary does not preclude enablement; what is required is that the amount of experimentation must not be unduly extensive. *Id.*

The Examiner states at page 5 of the Office Action that "the specification has not provided guidance with respect to a transgene that would alter animal plasma in a manner to cause growth benefit over plasma isolated from a non-transgenic animal." Applicants respectfully submit that to be enabling, the specification need only teach those skilled in the art how to make and use the full scope of the claimed invention without undue experimentation. The Examiner acknowledges in the final paragraph of page 4 of the Office Action, traversing to page 5, that "[w]ith respect to transgenic animals, these animals do contain blood from which plasma can be isolated for use in the claimed method." The Examiner also acknowledges at page 5 of the Office Action that "[t]he specification teaches recovering animal plasma from animal blood." The Examiner is respectfully requested to note that the pending claims do not recite that the transgene(s) cause the plasma to be more effective. The claims only recite that the source of the plasma is a transgenic animal, and transgenic animals, including bovines, are now available to the art. Thus, Applicants respectfully submit that the specification enables a method of increasing the live weight of poultry comprising: administering to poultry a composition comprising animal plasma, wherein the administration of the composition to the poultry preferentially increases the yield of white meat from the poultry (claim 1), wherein the source of the animal plasma is a transgenic animal (claim 10).

Furthermore, while the Examiner alleged that the state of the art at the time of filing with respect to transgenic animals was unpredictable, the Examiner cited publications from: 1990

(Mullins); 1990 (Hammer); 1989 (Mullins); 1988 (Taurog); 1996 (Wall); and 1994 (Overbeek). The Examiner is respectfully requested to note that the earliest claim of priority for the instant application is February 14, 2001, more than 10-12 years later than several of the cited publications. Moreover, even though the publications cited by the Examiner in the enablement rejection were not cited by Applicants to the Patent Office, copies of the cited publications were not supplied to Applicants. If the Examiner maintains the enablement rejection, the Examiner is respectfully requested to supply to Applicants copies of any publications cited within the rejection that the Applicants have not cited to the Patent Office. (*see* M.P.E.P § 707.05(a))

V. The 35 U.S.C. § 102 Rejection

The Examiner rejected claims 1-4, 7-9, 11-15, 18-22, 25 and 26 under 35 USC § 102(b) as being anticipated by Weaver *et al.* (U.S. Patent No. 6,004,576). Claims 15 and 18-22 have been cancelled. As this rejection may be maintained with respect to the pending claims, it is respectfully traversed.

Independent claim 1, which has been amended to include the elements of claim 16, recites a method of increasing the live weight of poultry comprising: administering to poultry a composition comprising animal plasma, wherein the administration of the composition to the poultry preferentially increases the yield of white meat from the poultry. The Examiner did not reject claim 16 under 35 USC § 102(b). Claims 2-4, 7-9, and 11-15 depend either directly or indirectly from claim 1.

Independent claim 22, which has been amended to include the elements of claim 23, recites a plasma water product for increasing the live weight of poultry comprising: a water source for said poultry, and animal plasma, whereby the plasma product comprises up to 0.05 to about 3.0% by weight of water. The Examiner did not reject claim 23 under 35 USC § 102(b). Claims 25 and 26 depend from claim 22.

A rejection of anticipation under 35 U.S.C. § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon*, 919 F.2d 688, 16 U.S.P.Q.2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the art. *Scripps Clinic & Res. Found. v. Genentech, Inc.*,

927 F.2d 1565, 18 USPQ2d 101 (Fed. Cir. 1991). To overcome the defense of anticipation, "it is only necessary for the patentee to show some tangible difference between the invention and the prior art." *Del Mar Engineering Lab v. Physio-Tronics, Inc.*, 642 F.2d 1167, 1172, (9th Cir. 1981). Applicants respectfully submit that the claims are not anticipated by the cited document.

U.S. Patent No. 6,004,576 is directed to a method of increasing weight gain and improving feed efficiency of animals in the first stages of life (*see* Claim 1) The '576 patent does not teach or suggest a method of increasing the live weight of poultry and preferentially increasing the yield of white meat from the poultry comprising administering to poultry a composition comprising animal plasma. Nor does the '576 patent teach or suggest a plasma water product for increasing the live weight of poultry comprising: a water source for said poultry, and animal plasma, whereby the plasma product comprises up to 0.05 to about 3.0% by weight of water. Accordingly, because the '576 patent lacks the disclosure of each element of the claims under consideration, withdraw of the rejection of the claims under 35 U.S.C. § 102 is appropriate and is respectfully requested.

VI. The 35 U.S.C. § 103 Rejection

The Examiner rejected claims 1-4, 7, 11, 13-15, 18-22, 25 and 26 under 35 USC § 103(a) as being unpatentable over Adalsteinsson *et al.* (U.S. Patent No. 6,086,878). Claims 15 and 18-22 have been cancelled. As this rejection may be maintained with respect to the pending claims, it is respectfully traversed.

A rejection of obviousness under 35 U.S.C. § 103 requires that the Examiner establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, the Examiner has the burden to establish three basic elements. First, the Examiner must establish that there is some suggestion or motivation, either in the cited documents themselves or in the knowledge generally available to an art worker, to modify the documents or to combine document teachings so as to arrive at the claimed invention. Second, the Examiner must establish that there is a reasonable expectation of success. Finally, the Examiner must establish that the prior art documents teach or suggests all the claim limitations. M.P.E.P. § 2143. Applicants respectfully submit that the claims are not *prima facie* obvious in view of the cited document because the cited document does not teach or suggest all of the claim limitations.

Independent claim 1, which has been amended to include the elements of claim 16, and independent claim 22, which has been amended to include the elements of claim 23, are described hereinabove. The Examiner did not reject claims 16 or 23 under 35 USC § 103.

U.S. Patent No. 6,086,878 is directed to methods of administering spray dried egg yolks containing anti-CCK antibodies to poultry to increase the muscle protein yield and to decrease the fat in the poultry (*see* Example 2, column 12). The '878 patent does not teach or suggest a method of increasing the live weight of poultry and preferentially increasing the yield of white meat from the poultry comprising administering to poultry a composition comprising animal plasma. Nor does the '878 patent teach or suggest a plasma water product for increasing the live weight of poultry comprising a water source for said poultry, and animal plasma, whereby the plasma product comprises up to 0.05 to about 3.0% by weight of water. Accordingly, because the '878 patent lacks the disclosure of each element of the claims under consideration, withdraw of the rejection of the claims under 35 U.S.C. § 103 is appropriate and is respectfully requested.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is respectfully requested. The Examiner is invited to telephone Applicants' attorney at (612) 371-2110 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,
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I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

Dawn M. Poole

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